IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 929 of 2005

in

NOTICE OF MOTION NO.381 OF 2002

in

SUIT NO. 395 OF 2002

Satish Shankar Paralkar .. Appellants

versus

Veerendra V. Tulzapurkar & ors... Respondents

...

Mr.R.V. Pai i/b Mrs.B.R.Pai for the appellant.

Mr.K.J. Munshi i/b M/s.Soloman & Co. for the respondent no.1.

Mr.D.R. Sanghvi for the respondent nos.5 and 6.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 20th December 2005.

P.C.:

Heard Mr.R.V.Pai, the learned counsel for the

appellant, Mr.K.J. Munshi, the learned counsel for respondent no.1 and Mr.D.R. Sanghvi, the learned counsel for respondent no.5 and 6.

2. The original plaintiff is in appeal aggrieved by the order dated 26th August 2005 whereby the learned Motion Judge dismissed the Motion taken out by the plaintiff for appointment of Court Receiver and injunction in respect of the Flat no.12 on the 4th floor of the building known as "Navneet", 125, Ram Maruti Road, Dadar(W), Mumbai.

3. Mrs.Pushpa S. Paralkar, the mother of the plaintiff indisputably was the owner of the property situate at 125, Ram Maruti Road, Dadar(W). She entered into a development agreement dated 9th April 1981 with Anil V. Randive (defendant no.7 - respondent no.7) for development of the existing building. As per the said agreement, the third and fourth floor of the developed building would belong to the developer and he could transfer the flats in these floors. The fifth and sixth floor of the building were to be given to the family members of the owner. The developer developed the property partly and then the dispute arose between the owner and the developer. That dispute is subject

matter of Civil Suit no.947 of 1983 pending before this Court. Flat no.12 which is subject matter of dispute of Suit no.395 of 2002 out of which the present appeal arises is part of the development made by a developer on fourth floor. The developer transferred the said flat to the defendant no.1 who transferred the said flat to the defendant nos.2 to 4. The defendant nos.2 to 4 are said to have transferred the subject flats to defendant nos. 5 and 6.

4. The fact that the subject flat is part of the flat that was developed by the developer and that under the development agreement the developer had the right to transfer the said flat, prima facie, shows that there is not much substance in the submission of the plaintiff that he continues to be the owner of that flat. We do not deem to enter into this aspect at length since the rights of the owner and the developer under the development agreement dated 9th April 1981 are subject matter of the civil suit no.947 of 1983. Suffice, however, to say that the defendant no.1 had purchased the subject flat from the developer after payment of full consideration and as already noticed above, it is the developer who had developed the said flat. It was admitted by the learned counsel for the

plaintiff that as per the development agreement, the development on fifth and sixth floor were to come to the owners family only. If the development agreement dated 9th April 1981 is held to be holding the field then the developer had full authority to dispose of flat no.12.

5. For all these reasons, we are satisfied that the plaintiff failed to establish any prima facie case justifying an interim order. However, we observe that transfers made by defendant no.7 in favour of defendant no.1 and further transfer by defendant no.1 to defendant nos.2 to 4 and by defendant nos.2 to 4 to defendant nos.5 and 6 and any further transfer shall be subject to the final decision in the suit.

6. Having ourselves considered the matter, we find no merit in the request of the learned counsel for the appellant that the matter be remanded back for consideration by the learned Motion Judge. He submitted that the appellant appeared in person before the learned Motion Judge on 26th August 2005 and prayed that he may be provided legal aid but that was unjustifiably turned down by the learned Motion Judge, and, therefore, no reasonable opportunity was given to

the plaintiff to put forth his case.

7. The learned counsel for the respondent no.1 submitted that the Notice of Motion came up for consideration before the learned Motion on 18th August 2005 and on that date at the request of the plaintiff, a weeks time was given to enable him to engage some other Advocate. On the next date, i.e. 26th August 2005, the plaintiff appeared himself and did not engage any other Advocate for which the time was earlier granted and instead prayed for legal aid. As the prayer made by the plaintiff was unjustified, the learned Motion Judge rightly turned down the request for adjournment on the ground of legal aid.

8. Since we have considered the matter on merits and found that no prima facie case was made out by the plaintiff for grant of interim relief, we hardly find any justification in remanding the matter to the learned Motion Judge.

9. Appeal has no merit and is dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)